

99TH CONGRESS  
2D SESSION

# S. 2575

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 19 (legislative day, JUNE 16), 1986

Mr. LEAHY (for himself and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Communica-  
5 tions Privacy Act of 1986”.

1 **TITLE I—INTERCEPTION OF COMMUNICA-**  
2 **TIONS AND RELATED MATTERS**

3 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**  
4 **COMMUNICATIONS.**

5 (a) **DEFINITIONS.**—(1) Section 2510(1) of title 18,  
6 United States Code, is amended—

7 (A) by striking out “any communication” and in-  
8 serting “any aural transfer” in lieu thereof;

9 (B) by inserting “(including the use of such con-  
10 nection in a switching station)” after “reception”.

11 (C) by striking out “as a common carrier” and

12 (D) by inserting before the semicolon at the end  
13 the following: “or communications affecting interstate  
14 or foreign commerce, but such term does not include  
15 the radio portion of a cordless telephone communica-  
16 tion that is transmitted between the cordless telephone  
17 handset and the base unit”.

18 (2) Section 2510(2) of title 18, United States Code, is  
19 amended by inserting before the semicolon at the end the  
20 following: “, but such term does not include any electronic  
21 communication”.

22 (3) Section 2510(4) of title 18, United States Code, is  
23 amended—

24 (A) by inserting “or other” after “aural”; and

25 (B) by inserting “, electronic,” after “wire”.

1       (4) Section 2510(8) of title 18, United States Code, is  
2 amended by striking out “identity of the parties to such com-  
3 munication or the existence,”.

4       (5) Section 2510 of title 18, United States Code, is  
5 amended—

6           (A) by striking out “and” at the end of paragraph  
7 (10);

8           (B) by striking out the period at the end of para-  
9 graph (11) and inserting a semicolon in lieu thereof;  
10 and

11          (C) by adding at the end the following:

12           “(12) ‘electronic communication’ means any trans-  
13 fer of signs, signals, writing, images, sounds, data, or  
14 intelligence of any nature transmitted in whole or in  
15 part by a wire, radio, electromagnetic, photoelectronic  
16 or photooptical system that affects interstate or foreign  
17 commerce, but does not include—

18           “(A) the radio portion of a cordless telephone  
19 communication that is transmitted between the  
20 cordless telephone handset and the base unit;

21           “(B) any wire or oral communication;

22           “(C) any communication made through a  
23 tone-only paging device; or

24           “(D) any communication from a tracking  
25 device (as defined in section 3117 of this title);

1           “(13) ‘user’ means any person or entity who—

2                   “(A) uses an electronic communication serv-  
3           ice; and

4                   “(B) is duly authorized by the provider of  
5           such service to engage in such use;

6           “(14) ‘electronic communications system’ means  
7           any wire, radio, electromagnetic, photooptical or pho-  
8           toelectronic facilities for the transmission of electronic  
9           communications, and any computer facilities or related  
10          electronic equipment for the electronic storage of such  
11          communications;

12          “(15) ‘electronic communication service’ means  
13          any service which provides to users thereof the ability  
14          to send or receive wire or electronic communications;

15          “(16) ‘readily accessible to the general public’  
16          means, with respect to a radio communication, that  
17          such communication is not—

18                   “(A) scrambled or encrypted;

19                   “(B) transmitted using modulation techniques  
20          whose essential parameters have been withheld  
21          from the public with the intention of preserving  
22          the privacy of such communication;

23                   “(C) carried on a subcarrier or other signal  
24          subsidiary to a radio transmission;

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1           “(D) transmitted over a communication  
2           system provided by a common carrier, unless the  
3           communication is a tone only paging system com-  
4           munication; or

5           “(E) transmitted on frequencies allocated  
6           under part 25, subpart D, E, or F of part 74, or  
7           part 94 of the Rules of the Federal Communica-  
8           tions Commission, unless, in the case of a commu-  
9           nication transmitted on a frequency allocated  
10          under part 74 that is not exclusively allocated to  
11          broadcast auxiliary services, the communication is  
12          a two-way voice communication by radio;

13          “(17) ‘electronic storage’ means—

14                 “(A) any temporary, intermediate storage of  
15                 a wire or electronic communication incidental to  
16                 the electronic transmission thereof; and

17                 “(B) any storage of such communication by  
18                 an electronic communication service for purposes  
19                 of backup protection of such communication; and

20          “(18) ‘aural transfer’ means a transfer containing  
21          the human voice at any point between and including  
22          the point of origin and the point of reception.”.

23          (b) EXCEPTIONS WITH RESPECT TO ELECTRONIC  
24          COMMUNICATIONS.—

1       (1) Section 2511(2)(d) of title 18, United States Code, is  
2 amended by striking out “or for the purpose of committing  
3 any other injurious act”.

4       (2) Section 2511(2)(f) of title 18, United States Code, is  
5 amended—

6           (A) by inserting “or chapter 121” after “this  
7 chapter”; and

8           (B) by striking out “by” the second place it ap-  
9 pears and inserting in lieu thereof “, or foreign intelli-  
10 gence activities conducted in accordance with other-  
11 wise applicable Federal law involving a foreign elec-  
12 tronic communications system, utilizing”.

13       (3) Section 2511(2) of title 18, United States Code, is  
14 amended by adding at the end the following:

15       “(g) It shall not be unlawful under this chapter or chap-  
16 ter 121 of this title for any person—

17           “(i) to intercept or access an electronic communi-  
18 cation made through an electronic communication  
19 system that is configured so that such electronic com-  
20 munication is readily accessible to the general public;

21           “(ii) to intercept any radio communication which  
22 is transmitted—

23           “(I) by any station for the use of the general  
24 public, or that relates to ships, aircraft, vehicles,  
25 or persons in distress;

1           “(II) by any governmental, law enforcement,  
2           civil defense, or public safety communications  
3           system, including police and fire, readily accessi-  
4           ble to the general public;

5           “(III) by a station operating on a frequency  
6           assigned to the amateur, citizens band, or general  
7           mobile radio services; or

8           “(IV) by any marine or aeronautical commu-  
9           nications system;

10          “(iii) to engage in any conduct which—

11           “(I) is prohibited by section 633 of the Com-  
12          munications Act of 1934; or

13           “(II) is excepted from the application of sec-  
14          tion 705(a) of the Communications Act of 1934  
15          by section 705(b) of that Act;

16          “(iv) to intercept any wire or electronic communi-  
17          cation the transmission of which is causing harmful in-  
18          terference to any lawfully operating station, to the  
19          extent necessary to identify the source of such interfer-  
20          ence; or

21          “(v) for other users of the same frequency to  
22          intercept any radio communication made through a  
23          common carrier system that utilizes frequencies moni-  
24          tored by individuals engaged in the provision or the use

1 of such system, if such communication is not scrambled  
2 encrypted.

3 “(h) It shall not be unlawful under this chapter—

4 “(i) to use a pen register (as that term is defined  
5 for the purposes of chapter 206 (relating to pen regis-  
6 ters) of this title);

7 “(ii) for a provider of electronic communication  
8 service to record the fact that a wire or electronic  
9 communication was initiated or completed in order to  
10 protect such provider, another provider furnishing serv-  
11 ice toward the completion of the wire or electronic  
12 communication, or a user of that service, from fraudu-  
13 lent, unlawful or abusive use of such service; or

14 “(iii) to use a device that captures the incoming  
15 electronic or other impulses which identify the numbers  
16 of an instrument from which a wire communication  
17 was transmitted.”.

18 (c) TECHNICAL AND CONFORMING AMENDMENTS.—(1)  
19 Chapter 119 of title 18, United States Code, is amended—

20 (A) in each of sections 2510(5), 2510(8),  
21 2510(9)(b), 2510(11), and 2511 through 2519 (except  
22 sections 2516(1) and 2518(10)), by striking out “wire  
23 or oral” each place it appears (including in any section  
24 heading) and inserting “wire, oral, or electronic” in  
25 lieu thereof; and



1 (B) in section 2511(2)(b), by inserting "or elec-  
2 tronic" after "wire".

3 (2) The heading of chapter 119 of title 18, United States  
4 Code, is amended by inserting "**AND ELECTRONIC COM-**  
5 **MUNICATIONS**" after "**WIRE**".

6 (3) The item relating to chapter 119 in the table of  
7 chapters at the beginning of part 1 of title 18 of the United  
8 States Code is amended by inserting "and electronic commu-  
9 nications" after "Wire".

10 (4) Section 2510(5)(a) of title 18, United States Code, is  
11 amended by striking out "communications common carrier"  
12 and inserting "provider of wire or electronic communication  
13 service" in lieu thereof.

14 (5) Section 2511(2)(a)(6) of title 18, United States Code,  
15 is amended --

16 (A) by striking out "any communication common  
17 carrier" and inserting "a provider of wire or electronic  
18 communication service" in lieu thereof;

19 (B) by striking out "of the carrier of such commu-  
20 nication" and inserting "of the provider of that service"  
21 in lieu thereof; and

22 (C) by striking out ": *Provided*, That said commu-  
23 nication common carriers" and inserting " except that  
24 a provider of wire communication service to the  
25 public" in lieu thereof.

1       (6) Section 2511(2)(a)(ii) of title 18, United States Code,  
2 is amended—

3           (A) by striking out “communication common carri-  
4 ers” and inserting “providers of wire or electronic  
5 communication service” in lieu thereof;

6           (B) by striking out “communication common carri-  
7 er” each place it appears and inserting “provider of  
8 wire or electronic communication service” in lieu  
9 thereof; and

10          (C) by striking out “if the common carrier” and  
11 inserting “if such provider” in lieu thereof.

12       (7) Section 2512(2)(a) of title 18, United States Code, is  
13 amended—

14           (A) by striking out “a communications common  
15 carrier” the first place it appears and inserting “a pro-  
16 vider of wire or electronic communication service” in  
17 lieu thereof; and

18           (B) by striking out “a communications common  
19 carrier” the second place it appears and inserting  
20 “such a provider” in lieu thereof; and

21           (C) by striking out “communications common car-  
22 rier’s business” and inserting “business of providing  
23 that wire or electronic communication service” in lieu  
24 thereof.

1       (8) Section 2518(4) of title 18, United States Code, is  
2 amended by striking out “communication common carrier”  
3 and inserting “provider of electronic communication service”  
4 in lieu thereof.

5       (d) **PENALTIES MODIFICATION.**—(1) Section 2511(1) of  
6 title 18, United States Code, is amended by striking out  
7 “shall be” and all that follows through “or both” and insert-  
8 ing in lieu thereof “shall be punished as provided in subsec-  
9 tion (4)”.

10       (2) Section 2511 of title 18, United States Code, is  
11 amended by adding after the material added by section 102  
12 the following:

13       “(4)(a) Except as provided in paragraph (b) of this sub-  
14 section, whoever violates subsection (1) of this section shall  
15 be fined under this title or imprisoned not more than five  
16 years, or both.

17       “(b) If the offense is a first offense under paragraph (a)  
18 of this subsection and is not for a tortious or illegal purpose  
19 or for purposes of direct or indirect commercial advantage or  
20 private commercial gain, and the wire or electronic communi-  
21 cation with respect to which the offense under paragraph (a)  
22 is a radio communication, then—

23               “(i) if the communication is not the radio portion  
24 of a cellular telephone communication, the offender

1 shall be fined under this title or imprisoned not more  
2 than one year, or both; and

3 “(ii) if the communication is the radio portion of a  
4 cellular telephone communication, the offender shall be  
5 fined not more than \$500 or imprisoned not more than  
6 six months, or both.

7 “(c) Conduct otherwise an offense under this subsection  
8 that consists of or relates to the interception of a satellite  
9 transmission that is not encrypted or scrambled and that  
10 transmitted to a broadcasting station for purposes of retrans-  
11 mission to the general public is not an offense under this  
12 subsection unless the conduct is for the purposes of direct or  
13 indirect commercial advantage or private financial gain.”

14 (e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO  
15 ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title  
16 18, United States Code, is amended by adding at the end the  
17 following:

18 “(c) The remedies and sanctions described in this chap-  
19 ter with respect to the interception of electronic communica-  
20 tions are the only judicial remedies and sanctions for noncon-  
21 stitutional violations of this chapter involving such communi-  
22 cations.”.

23 **SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.**

24 Section 2511 of title 18, United States Code, is amend-  
25 ed by adding at the end the following:

“(3)(A) Except as provided in subparagraph (B) of this paragraph, a person or entity providing an electronic communication service to the public shall not willfully divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

“(B) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

“(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

“(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

“(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

“(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.”.

1   **SEC. 103. RECOVERY OF CIVIL DAMAGES.**

2       Section 2520 of title 18, United States Code, is amend-  
3   ed to read as follows:

4   **“§ 2520. Recovery of civil damages authorized**

5       “(a) **IN GENERAL.**—Any person whose wire, oral, or  
6   electronic communication is intercepted, disclosed, or willful-  
7   ly used in violation of this chapter may in a civil action re-  
8   cover from the person or entity which engaged in that viola-  
9   tion such relief as may be appropriate.

10      “(b) **RELIEF.**—In an action under this section, appro-  
11   priate relief includes—

12          “(1) such preliminary and other equitable or de-  
13   claratory relief as may be appropriate;

14          “(2) damages under subsection (c) and punitive  
15   damages in appropriate cases; and

16          “(3) a reasonable attorney’s fee and other litiga-  
17   tion costs reasonably incurred.

18      “(c) **COMPUTATION OF DAMAGES.**—The court may  
19   assess as damages in an action under this section whichever  
20   is the greater of—

21          “(1) the sum of the actual damages suffered by  
22   the plaintiff and any profits made by the violator as a  
23   result of the violation; or

24          “(2) statutory damages of whichever is the great-  
25   er of \$100 a day for each day of violation or \$10,000.

26      “(d) **DEFENSE.**—A good faith reliance on—

1           “(1) a court warrant or order, a grand jury sub-  
2       poena, a legislative authorization, or a statutory  
3       authorization;

4           “(2) a request of an investigative or law enforce-  
5       ment officer under section 2518(7) of this title; or

6           “(3) a good faith determination that section  
7       2511(3) of this title permitted the conduct complained  
8       of;

9       is a complete defense against any civil or criminal action  
10      brought under this chapter or any other provision of law.

11       “(e) LIMITATION.—A civil action under this section  
12      may not be commenced later than two years after the date  
13      upon which the claimant first has a reasonable opportunity to  
14      discover the violation.”.

15   **SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT**  
16                           **OFFICIALS.**

17       Section 2516(1) of title 18 of the United States Code is  
18      amended by striking out “or any Assistant Attorney Gener-  
19      al” and inserting in lieu thereof “any Assistant Attorney  
20      General, any acting Assistant Attorney General, or any  
21      Deputy Assistant Attorney General in the Criminal  
22      Division”.

1 SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH  
2 INTERCEPTION IS AUTHORIZED.

3 (a) WIRE AND ORAL INTERCEPTIONS.—Section  
4 2516(1) of title 18 of the United States Code is amended—

5 (1) in paragraph (c)—

6 (A) by inserting “section 751 (relating to  
7 escape),” after “wagering information.”;

8 (B) by striking out “2314” and inserting  
9 “2312, 2313, 2314,” in lieu thereof;

10 (C) by inserting “the second section 2320  
11 (relating to trafficking in certain motor vehicles or  
12 motor vehicle parts), section 1203 (relating to  
13 hostage taking), section 1029 (relating to fraud  
14 and related activity in connection with access de-  
15 vices), section 3146 (relating to penalty for failure  
16 to appear), section 3521(b)(3) (relating to witness  
17 relocation and assistance), section 32 (relating to  
18 destruction of aircraft or aircraft facilities),” after  
19 “stolen property.”;

20 (D) by inserting “section 1952A (relating to  
21 use of interstate commerce facilities in the com-  
22 mission of murder for hire), section 1952B (relat-  
23 ing to violent crimes in aid of racketeering activi-  
24 ty),” after “1952 (interstate and foreign travel or  
25 transportation in aid of racketeering enter-  
26 prises).”; and



1 (E) by inserting “, section 115 (relating to  
2 threatening or retaliating against a Federal offi-  
3 cial), the section in chapter 65 relating to destruc-  
4 tion of an energy facility, and section 1341 (relat-  
5 ing to mail fraud),” after “section 1963 (violations  
6 with respect to racketeer influenced and corrupt  
7 organizations)”;

8 (2) by striking out “or” at the end of paragraph  
9 (g);

10 (3) by inserting after paragraph (g) the following:

11 “(h) any felony violation of sections 2511 and  
12 2512 (relating to interception and disclosure of certain  
13 communications and to certain intercepting devices) of  
14 this title;

15 “(i) the location of any fugitive from justice from  
16 an offense described in this section; or”; and

17 (4) by redesignating paragraph (h) as paragraph  
18 (j).

19 (b) INTERCEPTION OF ELECTRONIC COMMUNICA-  
20 TIONS.—Section 2516 of title 18 of the United States Code  
21 is amended by adding at the end the following:

22 “(3) Any attorney for the Government (as such term is  
23 defined for the purposes of the Federal Rules of Criminal  
24 Procedure) may authorize an application to a Federal judge  
25 of competent jurisdiction for, and such judge may grant, in

1 conformity with section 2518 of this title, an order authoriz-  
2 ing or approving the interception of electronic communica-  
3 tions by an investigative or law enforcement officer having  
4 responsibility for the investigation of the offense as to which  
5 the application is made, when such interception may provide  
6 or has provided evidence of any Federal felony.”.

7 **SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF**  
8 **ORDERS.**

9 (a) **PLACE OF AUTHORIZED INTERCEPTION.**—Section  
10 2518(3) of title 18 of the United States Code is amended by  
11 inserting “(and outside that jurisdiction but within the United  
12 States in the case of a mobile interception device authorized  
13 by a Federal court within such jurisdiction)” after “within  
14 the territorial jurisdiction of the court in which the judge is  
15 sitting”.

16 (b) **REIMBURSEMENT FOR ASSISTANCE.**—Section  
17 2518(4) of title 18 of the United States Code is amended by  
18 striking out “at the prevailing rates” and inserting in lieu  
19 thereof “for reasonable expenses incurred in providing such  
20 facilities or assistance”.

21 (c) **COMMENCEMENT OF THIRTY-DAY PERIOD AND**  
22 **POSTPONEMENT OF MINIMIZATION.**—Section 2518(5) of  
23 title 18 of the United States Code is amended—

24 (1) by inserting after the first sentence the follow-  
25 ing: “Such thirty-day period begins on the earlier of

1 the day on which the investigative or law enforcement  
2 officer first begins to conduct an interception under the  
3 order or ten days after the order is entered.”; and

4 (2) by adding at the end the following: “In the  
5 event the intercepted communication is in a code or  
6 foreign language, and an expert in that foreign lan-  
7 guage or code is not reasonably available during the  
8 interception period, minimization may be accomplished  
9 as soon as practicable after such interception. An inter-  
10 ception under this chapter may be conducted in whole  
11 or in part by Government personnel, or by an individ-  
12 ual operating under a contract with the Government,  
13 acting under the supervision of an investigative or law  
14 enforcement officer authorized to conduct the intercep-  
15 tion.”.

16 (d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILI-  
17 TIES FROM WHICH COMMUNICATIONS ARE TO BE INTER-  
18 CEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United  
19 States Code is amended by inserting “except as provided in  
20 subsection (11),” before “a particular description”.

21 (2) Section 2518(3)(d) of title 18 of the United States  
22 Code is amended by inserting “except as provided in subsec-  
23 tion (11),” before “there is”.

24 (3) Section 2518 of title 18 of the United States Code is  
25 amended by adding at the end the following:

1       “(11) The requirements of subsections (1)(b)(ii) and (3)(d)  
2 of this section relating to the specification of the facilities  
3 from which, or the place where, the communication is to be  
4 intercepted do not apply if—

5               “(i) in the case of an application with respect to  
6 the interception of an oral communication—

7                       “(I) the application is by a Federal investiga-  
8 tive or law enforcement officer and is approved by  
9 the Attorney General, the Deputy Attorney Gen-  
10 eral, the Associate Attorney General, an Assist-  
11 ant Attorney General, or an acting Assistant At-  
12 torney General;

13                       “(II) the application contains a full and com-  
14 plete statement as to why such specification is not  
15 practical and identifies the person committing the  
16 offense and whose communications are to be  
17 intercepted; and

18                       “(III) the judge finds that such specification  
19 is not practical; and

20               “(ii) in the case of an application with respect to a  
21 wire or electronic communication—

22                       “(I) the application is by a Federal investiga-  
23 tive or law enforcement officer and is approved by  
24 the Attorney General, the Deputy Attorney Gen-  
25 eral, the Associate Attorney General, an Assist-

1           ant Attorney General, or an acting Assistant At-  
2           torney General;

3           “(II) the application identifies the person be-  
4           lieved to be committing the offense and whose  
5           communications are to be intercepted and the ap-  
6           plicant makes a showing of a purpose, on the part  
7           of that person, to thwart interception by changing  
8           facilities; and

9           “(III) the judge finds that such purpose has  
10          been adequately shown.

11          “(12) An interception of a communication under an  
12          order with respect to which the requirements of subsections  
13          (1)(b)(ii) and (3)(d) of this section do not apply by reason of  
14          subsection (11) shall not begin until the facilities from which,  
15          or the place where, the communication is to be intercepted is  
16          ascertained by the person implementing the interception  
17          order.”.

18          (4) Section 2519(1)(b) of title 18, United States Code, is  
19          amended by inserting “(including whether or not the order  
20          was an order with respect to which the requirements of sec-  
21          tions 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply  
22          by reason of section 2518(11) of this title)” after “applied  
23          for”.

1 **SEC. 107. INTELLIGENCE ACTIVITIES.**

2 (a) **IN GENERAL.**—Nothing in this Act or the amend-  
3 ments made by this Act constitutes authority for the conduct  
4 of any intelligence activity.

5 (b) **CERTAIN ACTIVITIES UNDER PROCEDURES AP-**  
6 **PROVED BY THE ATTORNEY GENERAL.**—Nothing in chapter  
7 119 or chapter 121 of title 18, United States Code, shall  
8 affect the conduct, by officers or employees of the United  
9 States Government in accordance with other applicable Fed-  
10 eral law, under procedures approved by the Attorney Gener-  
11 al of activities intended to—

12 (1) intercept encrypted or other official communi-  
13 cations of United States executive branch entities or  
14 United States Government contractors for communica-  
15 tions security purposes;

16 (2) intercept radio communications transmitted be-  
17 tween or among foreign powers or agents of a foreign  
18 power as defined by the Foreign Intelligence Surveil-  
19 lance Act of 1978; or

20 (3) access an electronic communication system  
21 used exclusively by a foreign power or agent of a for-  
22 eign power as defined by the Foreign Intelligence Sur-  
23 veillance Act of 1978.

24 **SEC. 108. MOBILE TRACKING DEVICES.**

25 (a) **IN GENERAL.**—Chapter 205 of title 18, United  
26 States Code, is amended by adding at the end the following:

1   **“§ 3117. Mobile tracking devices**

2           “(a) IN GENERAL.—If a court is empowered to issue a  
3   warrant or other order for the installation of a mobile track-  
4   ing device, such order may authorize the use of that device  
5   within the jurisdiction of the court, and outside that jurisdic-  
6   tion if the device is installed in that jurisdiction.

7           “(b) DEFINITION.—As used in this section, the term  
8   ‘tracking device’ means an electronic or mechanical device  
9   which permits the tracking of the movement of a person or  
10   object.”.

11          (b) CLERICAL AMENDMENT.—The table of contents at  
12   the beginning of chapter 205 of title 18, United States Code,  
13   is amended by adding at the end the following:

          “3117. Mobile tracking devices.”.

14   **SEC. 109. WARNING SUBJECT OF SURVEILLANCE.**

15          Section 2232 of title 18, United States Code, is amend-  
16   ed—

17           (1) by inserting “(a) PHYSICAL INTERFERENCE  
18   WITH SEARCH.—” before “Whoever” the first place  
19   it appears;

20           (2) by inserting “(b) NOTICE OF SEARCH.—”  
21   before “Whoever” the second place it appears; and

22           (3) by adding at the end the following:

23          “(c) NOTICE OF CERTAIN ELECTRONIC SURVEIL-  
24   LANCE.—Whoever, having knowledge that a Federal investi-  
25   gative or law enforcement officer has been authorized or has

1 applied for authorization under chapter 119 to intercept a  
2 wire, oral, or electronic communication, in order to obstruct,  
3 impede, or prevent such interception, gives notice or at-  
4 tempts to give notice of the possible interception to any  
5 person shall be fined under this title or imprisoned not more  
6 than five years, or both.

7 “Whoever, having knowledge that a Federal officer has  
8 been authorized or has applied for authorization to conduct  
9 electronic surveillance under the Foreign Intelligence Sur-  
10 veillance Act (50 U.S.C. 1801, et seq.), in order to obstruct,  
11 impede, or prevent such activity, gives notice or attempts to  
12 give notice of the possible activity to any person shall be  
13 fined under this title or imprisoned not more than five years,  
14 or both.”.

15 **SEC. 110. INJUNCTIVE REMEDY.**

16 (a) **IN GENERAL.**—Chapter 119 of title 18, United  
17 States Code, is amended by adding at the end the following:  
18 **“§ 2521. Injunction against illegal interception**

19 “Whenever it shall appear that any person is engaged  
20 or is about to engage in any act which constitutes or will  
21 constitute a felony violation of this chapter, the Attorney  
22 General may initiate a civil action in a district court of the  
23 United States to enjoin such violation. The court shall pro-  
24 ceed as soon as practicable to the hearing and determination  
25 of such an action, and may, at any time before final determi-



1 nation, enter such a restraining order or prohibition, or take  
2 such other action, as is warranted to prevent a continuing  
3 and substantial injury to the United States or to any person  
4 or class of persons for whose protection the action is brought.  
5 A proceeding under this section is governed by the Federal  
6 Rules of Civil Procedure, except that, if an indictment has  
7 been returned against the respondent, discovery is governed  
8 by the Federal Rules of Criminal Procedure.”.

9 (b) CLERICAL AMENDMENT.—The table of sections at  
10 the beginning of chapter 119 of title 18, United States Code,  
11 is amended by adding at the end thereof the following:

“2521. Injunction against illegal interception.”.

12 **SEC. 111. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection (b),  
14 this title and the amendments made by this title shall take  
15 effect 90 days after the date of the enactment of this Act and  
16 shall, in the case of conduct pursuant to a court order or  
17 extension, apply only with respect to court orders or exten-  
18 sions made after this title takes effect.

19 (b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF  
20 INTERCEPTIONS.—Any interception pursuant to section  
21 2516(2) of title 18 of the United States Code which would be  
22 valid and lawful without regard to the amendments made by  
23 this title shall be valid and lawful notwithstanding such  
24 amendments if such interception occurs during the period be-

1 ginning on the date such amendments take effect and ending  
 2 on the earlier of—

3 (1) the day before the date of the taking effect of  
 4 State law conforming the applicable State statute with  
 5 chapter 119 of title 18, United States Code, as so  
 6 amended; or

7 (2) the date two years after the date of the enact-  
 8 ment of this Act.

9 **TITLE II—STORED WIRE AND ELECTRONIC**  
 10 **COMMUNICATIONS AND TRANSACTION-**  
 11 **AL RECORDS ACCESS**

12 **SEC. 201. TITLE 18 AMENDMENT.**

13 Title 18, United States Code, is amended by inserting  
 14 after chapter 119 the following:

15 **“CHAPTER 121—STORED WIRE AND ELECTRONIC**  
 16 **COMMUNICATIONS AND TRANSACTIONAL**  
 17 **RECORDS ACCESS**

“Sec.

“2701. Unlawful access to stored communications.

“2702. Disclosure of contents.

“2703. Requirements for governmental access.

“2704. Backup preservation.

“2705. Delayed notice.

“2706. Cost reimbursement.

“2707. Civil action.

“2708. Exclusivity of remedies.

“2709. Counterintelligence access to telephone toll and transactional records.

“2710. Definitions.

18 **“§ 2701. Unlawful access to stored communications**

19 “(a) **OFFENSE.**—Except as provided in subsection (c) of  
 20 this section whoever—

1           “(1) intentionally accesses without authorization a  
2           facility through which an electronic communication  
3           service is provided; or

4           “(2) intentionally exceeds an authorization to  
5           access that facility;

6           and thereby obtains, alters, or prevents authorized access to  
7           a wire or electronic communication while it is in electronic  
8           storage in such system shall be punished as provided in sub-  
9           section (b) of this section.

10          “(b) PUNISHMENT.—The punishment for an offense  
11          under subsection (a) of this section is—

12               “(1) if the offense is committed for purposes of  
13               commercial advantage, malicious destruction or  
14               damage, or private commercial gain—

15                       “(A) a fine of not more than \$250,000 or  
16                       imprisonment for not more than one year, or both,  
17                       in the case of a first offense under this subpara-  
18                       graph; and

19                       “(B) a fine under this title or imprisonment  
20                       for not more than two years, or both, for any sub-  
21                       sequent offense under this subparagraph; and

22               “(2) a fine of not more than \$5,000 or imprison-  
23               ment for not more than six months, or both, in any  
24               other case.

1       “(c) EXCEPTIONS.—Subsection (a) of this section does  
2 not apply with respect to conduct authorized—

3               “(1) by the person or entity providing a wire or  
4 electronic communications service;

5               “(2) by a user of that service with respect to a  
6 communication of or intended for that user; or

7               “(3) in section 2703 or 2704 of this title.

8       **“§ 2702. Disclosure of contents**

9       “(a) PROHIBITIONS.—Except as provided in subsection  
10 (b)—

11               “(1) a person or entity providing an electronic  
12 communication service to the public shall not knowing-  
13 ly divulge to any person or entity the contents of a  
14 communication while in electronic storage by that serv-  
15 ice; and

16               “(2) a person or entity providing remote comput-  
17 ing service to the public shall not knowingly divulge to  
18 any person or entity the contents of any communica-  
19 tion which is carried or maintained on that service—

20                       “(A) on behalf of, and received by means of  
21 electronic transmission from (or created by means  
22 of computer processing of communications re-  
23 ceived by means of electronic transmission from),  
24 a subscriber or customer of such service; and

1           “(B) solely for the purpose of providing stor-  
2           age or computer processing services to such sub-  
3           scriber or customer, if the provider is not author-  
4           ized to access the contents of any such communi-  
5           cations for purposes of providing any services  
6           other than storage or computer processing.

7           “(b) EXCEPTIONS.—A person or entity may divulge the  
8 contents of a communication—

9           “(1) to an addressee or intended recipient of such  
10          communication or an agent of such addressee or in-  
11          tended recipient;

12          “(2) as otherwise authorized in section 2516,  
13          2511(2)(a), or 2703 of this title;

14          “(3) with the lawful consent of the originator or  
15          an addressee or intended recipient of such communica-  
16          tion, or the subscriber in the case of remote computing  
17          service;

18          “(4) to a person employed or authorized or whose  
19          facilities are used to forward such communication to its  
20          destination;

21          “(5) as may be necessarily incident to the rendi-  
22          tion of the service or to the protection of the rights or  
23          property of the provider of that service; or

24          “(6) to a law enforcement agency, if such con-  
25          tents—

1                   “(A) were inadvertently obtained by the  
2                   service provider; and

3                   “(B) appear to pertain to the commission of  
4                   a crime.

5   **“§ 2703. Requirements for governmental access**

6       “(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN  
7   ELECTRONIC STORAGE.—A governmental entity may re-  
8   quire the disclosure by a provider of electronic communica-  
9   tion service of the contents of a non-voice wire communica-  
10   tion or an electronic communication, that is in electronic stor-  
11   age in an electronic communications system for one hundred  
12   and eighty days or less, only pursuant to a warrant issued  
13   under the Federal Rules of Criminal Procedure or equivalent  
14   State warrant. A governmental entity may require the disclo-  
15   sure by a provider of electronic communications services of  
16   the contents of an electronic communication that has been in  
17   electronic storage in an electronic communications system for  
18   more than one hundred and eighty days by the means avail-  
19   able under subsection (b) of this section.

20       “(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN  
21   A REMOTE COMPUTING SERVICE.—(1) A governmental  
22   entity may require a provider of remote computing service to  
23   disclose the contents of any electronic communication to  
24   which this paragraph is made applicable by paragraph (2) of  
25   this subsection—

1           “(A) without required notice to the subscriber or  
2           customer, if the governmental entity obtains a warrant  
3           issued under the Federal Rules of Criminal Procedure  
4           or equivalent State warrant; or

5           “(B) with prior notice from the governmental  
6           entity to the subscriber or customer if the governmen-  
7           tal entity—

8                   “(i) uses an administrative subpoena author-  
9                   ized by a Federal or State statute or a Federal or  
10                  State grand jury subpoena; or

11                  “(ii) obtains a court order for such disclosure  
12                  under subsection (d) of this section;  
13           except that delayed notice may be given pursuant to  
14           section 2705 of this title.

15           “(2) Paragraph (1) is applicable with respect to any  
16           electronic communication that is held or maintained on that  
17           service—

18                  “(A) on behalf of, and received by means of elec-  
19                  tronic transmission from (or created by means of com-  
20                  puter processing of communications received by means  
21                  of electronic transmission from), a subscriber or cus-  
22                  tomer of such remote computing service; and

23                  “(B) solely for the purpose of providing storage or  
24                  computer processing services to such subscriber or cus-  
25                  tomer, if the provider is not authorized to access the

1 contents of any such communications for purposes of  
2 providing any services other than storage or computer  
3 processing.

4 “(c) RECORDS CONCERNING ELECTRONIC COMMUNI-  
5 CATIONS SERVICE OR REMOTE COMPUTING SERVICE.—A  
6 governmental entity may require a provider of electronic  
7 communications service or remote computing service to dis-  
8 close a record or other information pertaining to a subscriber  
9 to or customer of such service (not including the contents of  
10 communications covered by subsection (a) or (b) of this sec-  
11 tion) without required notice to the subscriber or customer if  
12 the governmental entity—

13 “(1) uses an administrative subpoena authorized  
14 by a Federal or State statute, or a Federal or State  
15 grand jury subpoena;

16 “(2) obtains a warrant issued under the Federal  
17 Rules of Criminal Procedure or equivalent State war-  
18 rant; or

19 “(3) obtains a court order for such disclosure  
20 under subsection (d) of this section.

21 “(d) REQUIREMENTS FOR COURT ORDER.—A court  
22 order for disclosure under subsection (b) or (c) of this section  
23 shall issue only if the governmental entity shows that there is  
24 reason to believe the contents of a wire or electronic commu-  
25 nication, or the records or other information sought, are rele-



1 want to a legitimate law enforcement inquiry. In the case of a  
2 State governmental authority, such a court order shall not  
3 issue if prohibited by the law of such State.

4 **“§ 2704. Backup preservation**

5       “(a) BACKUP PRESERVATION.—(1) A governmental  
6 entity acting under section 2703(b)(2) may include in its sub-  
7 poena or court order a requirement that the service provider  
8 to whom the request is directed create a backup copy of the  
9 contents of the electronic communications sought in order to  
10 preserve those communications. Without notifying the sub-  
11 scriber or customer of such subpoena or court order, such  
12 service provider shall create such backup copy as soon as  
13 practicable consistent with its regular business practices and  
14 shall confirm to the governmental entity that such backup  
15 copy has been made. Such backup copy shall be created  
16 within two business days after receipt by the service provider  
17 of the subpoena or court order.

18       “(2) Notice to the subscriber or customer shall be made  
19 by the governmental entity within three days after receipt of  
20 such confirmation, unless such notice is delayed pursuant to  
21 section 2705(a).

22       “(3) The service provider shall not destroy such backup  
23 copy until the later of—

24               “(A) the delivery of the information; or

1           “(B) the resolution of any proceedings (including  
2       appeals of any proceeding) concerning the govern-  
3       ment’s subpoena or court order.

4       “(4) The service provider shall release such backup copy  
5   to the requesting governmental entity no sooner than four-  
6   teen days after the governmental entity’s notice to the sub-  
7   scriber or customer if such service provider—

8           “(A) has not received notice from the subscriber  
9       or customer that the subscriber or customer has chal-  
10      lenged the governmental entity’s request; and

11           “(B) has not initiated proceedings to challenge the  
12      request of the governmental entity.

13       “(5) A governmental entity may seek to require the cre-  
14   ation of a backup copy under subsection (a)(1) of this section  
15   if in its sole discretion such entity determines that there is  
16   reason to believe that notification under section 2703 of this  
17   title of the existence of the subpoena or court order may  
18   result in destruction of or tampering with evidence. This de-  
19   termination is not subject to challenge by the subscriber or  
20   customer or service provider.

21       “(b) CUSTOMER CHALLENGES.—(1) Within fourteen  
22   days after notice by the governmental entity to the subscriber  
23   or customer under subsection (a)(2) of this section, such sub-  
24   scriber or customer may file a motion to quash such subpoena  
25   or vacate such court order, with copies served upon the gov-

1 ernmental entity and with written notice of such challenge to  
2 the service provider. A motion to vacate a court order shall  
3 be filed in the court which issued such order. A motion to  
4 quash a subpoena shall be filed in the appropriate United  
5 States district court or State court. Such motion or applica-  
6 tion shall contain an affidavit or sworn statement—

7           “(A) stating that the applicant is a customer or  
8           subscriber to the service from which the contents of  
9           electronic communications maintained for him have  
10          been sought; and

11          “(B) stating the applicant’s reasons for believing  
12          that the records sought are not relevant to a legitimate  
13          law enforcement inquiry or that there has not been  
14          substantial compliance with the provisions of this chap-  
15          ter in some other respect.

16          “(2) Service shall be made under this section upon a  
17          governmental entity by delivering or mailing by registered or  
18          certified mail a copy of the papers to the person, office, or  
19          department specified in the notice which the customer has  
20          received pursuant to this chapter. For the purposes of this  
21          section, the term ‘delivery’ has the meaning given that term  
22          in the Federal Rules of Civil Procedure.

23          “(3) If the court finds that the customer has complied  
24          with paragraphs (1) and (2) of this subsection, the court shall  
25          order the governmental entity to file a sworn response, which

1 may be filed in camera if the governmental entity includes in  
2 its response the reasons which make in camera review appro-  
3 priate. If the court is unable to determine the motion or ap-  
4 plication on the basis of the parties' initial allegations and  
5 response, the court may conduct such additional proceedings  
6 as it deems appropriate. All such proceedings shall be com-  
7 pleted and the motion or application decided as soon as prac-  
8 ticable after the filing of the governmental entity's response.

9       “(4) If the court finds that the applicant is not the sub-  
10 scriber or customer for whom the communications sought by  
11 the governmental entity are maintained, or that there is a  
12 reason to believe that the law enforcement inquiry is legiti-  
13 mate and that the communications sought are relevant to  
14 that inquiry, it shall deny the motion or application and order  
15 such process enforced. If the court finds that the applicant is  
16 the subscriber or customer for whom the communications  
17 sought by the governmental entity are maintained, and that  
18 there is not a reason to believe that the communications  
19 sought are relevant to a legitimate law enforcement inquiry,  
20 or that there has not been substantial compliance with the  
21 provisions of this chapter, it shall order the process quashed.

22       “(5) A court order denying a motion or application  
23 under this section shall not be deemed a final order and no  
24 interlocutory appeal may be taken therefrom by the custom-  
25 er.

1   **“§ 2705. Delayed notice**

2           “(a) DELAY OF NOTIFICATION.—(1) A governmental  
3   entity acting under section 2703(b) of this title may—

4           “(A) where a court order is sought, include in the  
5   application a request, which the court shall grant, for  
6   an order delaying the notification required under sec-  
7   tion 2703(b) of this title for a period not to exceed  
8   ninety days, if the court determines that there is  
9   reason to believe that notification of the existence of  
10   the court order may have an adverse result described  
11   in paragraph (2) of this subsection; or

12           “(B) where an administrative subpoena authorized  
13   by a Federal or State statute or a Federal or State  
14   grand jury subpoena is obtained, delay the notification  
15   required under section 2703(b) of this title for a period  
16   not to exceed ninety days upon the execution of a writ-  
17   ten certification of a supervisory official that there is  
18   reason to believe that notification of the existence of  
19   the subpoena may have an adverse result described in  
20   paragraph (2) of this subsection.

21           “(2) An adverse result for the purposes of paragraph (1)  
22   of this subsection is—

23           “(A) endangering the life or physical safety of an  
24   individual;

25           “(B) flight from prosecution;

26           “(C) destruction of or tampering with evidence;

1           “(D) intimidation of potential witnesses; or

2           “(E) otherwise seriously jeopardizing an investiga-  
3           tion or unduly delaying a trial.

4           “(3) The governmental entity shall maintain a true copy  
5           of certification under paragraph (1)(B).

6           “(4) Extensions of the delay of notification provided in  
7           section 2703 of up to ninety days each may be granted by the  
8           court upon application, or by certification by a governmental  
9           entity, but only in accordance with subsection (b) or (c) of this  
10          section.

11          “(5) Upon expiration of the period of delay of notifica-  
12          tion under paragraph (1) or (4) of this subsection, the govern-  
13          mental entity shall serve upon, or deliver by registered or  
14          first-class mail to, the customer or subscriber a copy of the  
15          process or request together with notice that—

16               “(A) states with reasonable specificity the nature  
17               of the law enforcement inquiry; and

18               “(B) informs such customer or subscriber—

19                       “(i) that information maintained for such cus-  
20                       tomer or subscriber by the service provider named  
21                       in such process or request was supplied to or re-  
22                       quested by that governmental authority and the  
23                       date on which the supplying or request took  
24                       place;

1           “(ii) that notification of such customer or  
2           subscriber was delayed;

3           “(iii) what governmental entity or court  
4           made the certification or determination pursuant  
5           to which that delay was made; and

6           “(iv) which provision of this chapter allowed  
7           such delay.

8           “(6) As used in this subsection, the term ‘supervi-  
9           sory official’ means the investigative agent in charge or  
10          assistant investigative agent in charge or an equivalent  
11          of an investigating agency’s headquarters or regional  
12          office, or the chief prosecuting attorney or the first as-  
13          sistant prosecuting attorney or an equivalent of a pros-  
14          ecuting attorney’s headquarters or regional office.

15          “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-  
16          ERNMENTAL ACCESS.—A governmental entity acting under  
17          section 2703, when it is not required to notify the subscriber  
18          or customer under section 2703(b)(1), or to the extent that it  
19          may delay such notice pursuant to subsection (a) of this sec-  
20          tion, may apply to a court for an order commanding a provid-  
21          er of electronic communications service or remote computing  
22          service to whom a warrant, subpoena, or court order is di-  
23          rected, for such period as the court deems appropriate, not to  
24          notify any other person of the existence of the warrant, sub-  
25          poena, or court order. The court shall enter such an order if

1 it determines that there is reason to believe that notification  
2 of the existence of the warrant, subpoena, or court order will  
3 result in—

4 “(1) endangering the life or physical safety of an  
5 individual;

6 “(2) flight from prosecution;

7 “(3) destruction of or tampering with evidence;

8 “(4) intimidation of potential witnesses; or

9 “(5) otherwise seriously jeopardizing an investiga-  
10 tion or unduly delaying a trial.

11 **“§ 2706. Cost reimbursement**

12 “(a) PAYMENT.—Except as otherwise provided in sub-  
13 section (c), a governmental entity obtaining the contents of  
14 communications, records, or other information under section  
15 2702, 2703, or 2704 of this title shall pay to the person or  
16 entity assembling or providing such information a fee for re-  
17 imbursement for such costs as are reasonably necessary and  
18 which have been directly incurred in searching for, assem-  
19 bling, reproducing, or otherwise providing such information.  
20 Such reimbursable costs shall include any costs due to neces-  
21 sary disruption of normal operations of any electronic com-  
22 munication service or remote computing service in which  
23 such information may be stored.

24 “(b) AMOUNT.—The amount of the fee provided by sub-  
25 section (a) shall be as mutually agreed by the governmental



1 entity and the person or entity providing the information, or,  
2 in the absence of agreement, shall be as determined by the  
3 court which issued the order for production of such informa-  
4 tion (or the court before which a criminal prosecution relating  
5 to such information would be brought, if no court order was  
6 issued for production of the information).

7       “(c) The requirement of subsection (a) of this section  
8 does not apply with respect to records or other information  
9 maintained by a communications common carrier that relate  
10 to telephone toll records and telephone listings obtained  
11 under section 2703 of this title. The court may, however,  
12 order a payment as described in subsection (a) if the court  
13 determines the information required is unusually voluminous  
14 in nature or otherwise caused an undue burden on the provid-  
15 er.

16 **“§ 2707. Civil action**

17       “(a) CAUSE OF ACTION.—Any provider of electronic  
18 communication service, subscriber, or customer aggrieved by  
19 any violation of this chapter in which the conduct constitut-  
20 ing the violation is engaged in with a knowing or intentional  
21 state of mind may, in a civil action, recover from the person  
22 or entity which engaged in that violation such relief as may  
23 be appropriate.

24       “(b) RELIEF.—In a civil action under this section, ap-  
25 propriate relief includes—

1           “(1) such preliminary and other equitable or de-  
2       claratory relief as may be appropriate;

3           “(2) damages under subsection (c); and

4           “(3) a reasonable attorney’s fee and other litiga-  
5       tion costs reasonably incurred.

6       “(c) DAMAGES.—The court may assess as damages in a  
7       civil action under this section the sum of the actual damages  
8       suffered by the plaintiff and any profits made by the violator  
9       as a result of the violation, but in no case shall a person  
10      entitled to recover receive less than the sum of \$1,000.

11      “(d) DEFENSE.—A good faith reliance on—

12           “(1) a court warrant or order, a grand jury sub-  
13      poena, a legislative authorization, or a statutory au-  
14      thorization;

15           “(2) a request of an investigative or law enforce-  
16      ment officer under section 2518(7) of this title; or

17           “(3) a good faith determination that section  
18      2511(3) of this title permitted the conduct complained  
19      of;

20      is a complete defense to any civil or criminal action brought  
21      under this chapter or any other law.

22      “(e) LIMITATION.—A civil action under this section  
23      may not be commenced later than two years after the date  
24      upon which the claimant first discovered or had a reasonable  
25      opportunity to discover the violation.

1   **“§ 2708. Exclusivity of remedies**

2           “The remedies and sanctions described in this chapter  
3   are the only judicial remedies and sanctions for nonconstitu-  
4   tional violations of this chapter.

5   **“§ 2709. Counterintelligence access to telephone toll and**  
6                               **transactional records**

7           “(a) DUTY TO PROVIDE.—A Communications common  
8   carrier or an electronic communication service provider shall  
9   comply with a request made for telephone subscriber informa-  
10   tion and toll billing records information, or electronic commu-  
11   nication transactional records made by the Director of the  
12   Federal Bureau of Investigation under subsection (b) of this  
13   section.

14          “(b) REQUIRED CERTIFICATION.—The Director of the  
15   Federal Bureau of Investigation (or an individual within the  
16   Federal Bureau of Investigation designated for this purpose  
17   by the Director) may request any such information and  
18   records if the Director (or the Director’s designee) certifies in  
19   writing to the carrier or provider to which the request is  
20   made that—

21               “(1) the information sought is relevant to an au-  
22               thorized foreign counterintelligence investigation; and

23               “(2) there are specific and articulable facts giving  
24               reason to believe that the person or entity to whom the  
25               information sought pertains is a foreign power or an  
26               agent of a foreign power as defined in section 101 of

1 the Foreign Intelligence Surveillance Act of 1978 (50  
2 U.S.C. 1801).

3 "(c) PROHIBITION OF CERTAIN DISCLOSURE.—No  
4 communications common carrier or service provider, or offi-  
5 cer, employee, or agent thereof, shall disclose to any person  
6 that the Federal Bureau of Investigation has sought or ob-  
7 tained access to information or records under this section.

8 "(d) DISSEMINATION BY BUREAU.—The Federal  
9 Bureau of Investigation may disseminate information and  
10 records obtained under this section only as provided in guide-  
11 lines approved by the Attorney General for foreign intelli-  
12 gence collection and foreign counterintelligence investiga-  
13 tions conducted by the Federal Bureau of Investigation, and,  
14 with respect to dissemination to an agency of the United  
15 States, only if such information is clearly relevant to the au-  
16 thorized responsibilities of such agency.

17 "(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL  
18 BODIES BE INFORMED.—On a semiannual basis the Director  
19 of the Federal Bureau of Investigation shall fully inform the  
20 Permanent Select Committee on Intelligence of the House of  
21 Representatives and the Select Committee on Intelligence of  
22 the Senate concerning all requests made under subsection (b)  
23 of this section.

24 "§ 2710. Definitions for chapter

25 "As used in this chapter—

1           “(1) the terms defined in section 2510 of this title  
2       have, respectively, the definitions given such terms in  
3       that section; and

4           “(2) the term ‘remote computing service’ means  
5       the provision to the public of computer storage or proc-  
6       essing services by means of an electronic communica-  
7       tions system.”.

8       (b) CLERICAL AMENDMENT.—The table of chapters at  
9       the beginning of part I of title 18, United States Code, is  
10      amended by adding at the end the following:

          “121. **Stored Wire and Electronic Communications**  
          **and Transactional Records Access**..... 2701”.

11   **SEC. 202. EFFECTIVE DATE.**

12       This title and the amendments made by this title shall  
13      take effect ninety days after the date of the enactment of this  
14      Act and shall, in the case of conduct pursuant to a court  
15      order or extension, apply only with respect to court orders or  
16      extensions made after this title takes effect.

## 17                   **TITLE III—PEN REGISTERS**

18   **SEC. 301. TITLE 18 AMENDMENT.**

19       (a) IN GENERAL.—Title 18 of the United States Code  
20      is amended by inserting after chapter 205 the following new  
21      chapter:

## 22                   **“CHAPTER 206—PEN REGISTERS**

          “Sec.

          “3121. General prohibition on pen register use; exception.

          “3122. Application for an order for a pen register.

          “3123. Issuance of an order for a pen register.

          “3124. Assistance in installation and use of a pen register.

“3125. Reports concerning pen registers.

“3126. Definitions for chapter.

1 **“§ 3121. General prohibition on pen register use; exception**

2 “(a) IN GENERAL.—Except as provided in this section,  
3 no person may install or use a pen register without first ob-  
4 taining a court order under section 3123 of this title or under  
5 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
6 1801 et seq.).

7 “(b) EXCEPTION.—The prohibition of subsection (a)  
8 does not apply with respect to the use of a pen register by a  
9 provider of electronic or wire communication service—

10 “(1) relating to the operation, maintenance, and  
11 testing of a wire or electronic communication service  
12 or to the protection of the rights or property of such  
13 provider, or to the protection of users of that service  
14 from abuse of service or unlawful use of service; or

15 “(2) to record the fact that a wire or electronic  
16 communication was initiated or completed in order to  
17 protect such provider, another provider furnishing serv-  
18 ice toward the completion of the wire communication,  
19 or a user of that service, from fraudulent, unlawful or  
20 abusive use of service, or with the consent of the user  
21 of that service.

22 “(c) PENALTY.—Whoever knowingly violates subsec-  
23 tion (a) shall be fined under this title or imprisoned not more  
24 than one year, or both.

1 **“§ 3122. Application for an order for a pen register**

2       “(a) APPLICATION.—(1) An attorney for the Govern-  
3 ment may make application for an order or an extension of an  
4 order under section 3123 of this title authorizing or approv-  
5 ing the installation and use of a pen register under this chap-  
6 ter, in writing under oath or equivalent affirmation, to a court  
7 of competent jurisdiction.

8       “(2) Unless prohibited by State law, a State investiga-  
9 tive or law enforcement officer may make application for an  
10 order or an extension of an order under section 3123 of this  
11 title authorizing or approving the installation and use of a  
12 pen register under this chapter, in writing under oath or  
13 equivalent affirmation, to a court of competent jurisdiction of  
14 such State.

15       “(b) CONTENTS OF APPLICATION.—An application  
16 under subsection (a) of this section shall include—

17               “(1) the identity of the attorney for the Govern-  
18 ment or the State law enforcement or investigative of-  
19 ficer making the application and the identity of the law  
20 enforcement agency conducting the investigation; and

21               “(2) a certification by the applicant that the infor-  
22 mation likely to be obtained is relevant to an ongoing  
23 criminal investigation being conducted by that agency.

24 **“§ 3123. Issuance of an order for a pen register**

25       “(a) IN GENERAL.—Upon an application made under  
26 section 3122 of this title, the court shall enter an ex parte

1 order authorizing the installation and use of a pen register  
2 within the jurisdiction of the court if the court finds that the  
3 attorney for the government or the State law enforcement or  
4 investigative officer has certified to the court that the infor-  
5 mation likely to be obtained by such installation and use is  
6 relevant to an ongoing criminal investigation.

7 “(b) CONTENTS OF ORDER.—An order issued under  
8 this section—

9 “(1) shall specify—

10 “(A) the identity, if known, of the person to  
11 whom is leased or in whose name is listed the  
12 telephone line to which the pen register is to be  
13 attached;

14 “(B) the identity, if known, of the person  
15 who is the subject of the criminal investigation;

16 “(C) the number and, if known, physical lo-  
17 cation of the telephone line to which the pen reg-  
18 ister is to be attached; and

19 “(D) a statement of the offense to which the  
20 information likely to be obtained by the pen regis-  
21 ter relates; and

22 “(2) shall direct, upon the request of the appli-  
23 cant, the furnishing of information, facilities, and tech-  
24 nical assistance necessary to accomplish the installation  
25 of the pen register under section 3124 of this title.



1       “(c) TIME PERIOD AND EXTENSIONS.—(1) An order  
2 issued under this section shall authorize the installation and  
3 use of a pen register for a period not to exceed sixty days.

4       “(2) Extensions of such an order may be granted, but  
5 only upon an application for an order under section 3122 of  
6 this title and upon the judicial finding required by subsection  
7 (a) of this section. The period of extension shall be for a  
8 period not to exceed sixty days.

9       “(d) NONDISCLOSURE OF EXISTENCE OF PEN REGIS-  
10 TER.—An order authorizing or approving the installation and  
11 use of a pen register shall direct that—

12               “(1) the order be sealed until otherwise ordered  
13 by the court; and

14               “(2) the person owning or leasing the line to  
15 which the pen register is attached, or who has been or-  
16 dered by the court to provide assistance to the appli-  
17 cant, not disclose the existence of the pen register or  
18 the existence of the investigation to the listed subscrib-  
19 er, or to any other person, unless or until otherwise or-  
20 dered by the court.

21       **“§ 3124. Assistance in installation and use of a pen regis-**  
22                       **ter**

23       “(a) IN GENERAL.—Upon the request of an attorney for  
24 the government or an officer of a law enforcement agency  
25 authorized to install and use a pen register under this chap-

1 ter, a provider of wire communication service, landlord, cus-  
2 todian, or other person shall furnish such investigative or law  
3 enforcement officer forthwith all information, facilities, and  
4 technical assistance necessary to accomplish the installation  
5 of the pen register unobtrusively and with a minimum of in-  
6 terference with the services that the person so ordered by the  
7 court accords the party with respect to whom the installation  
8 and use is to take place, if such assistance is directed by a  
9 court order as provided in section 3123(b)(2) of this title.

10 “(b) COMPENSATION.—A provider of wire communica-  
11 tion service, landlord, custodian, or other person who fur-  
12 nishes facilities or technical assistance pursuant to this sec-  
13 tion shall be reasonably compensated for such reasonable ex-  
14 penses incurred in providing such facilities and assistance.

15 **“§ 3125. Reports concerning pen registers**

16 “The Attorney General shall annually report to Con-  
17 gress on the number of pen register orders applied for by law  
18 enforcement agencies of the Department of Justice.

19 **“§ 3126. Definitions for chapter**

20 “As used in this chapter—

21 “(1) the term ‘communications common carrier’  
22 has the meaning set forth for the term ‘common carri-  
23 er’ in section 3(h) of the Communications Act of 1934  
24 (47 U.S.C. 153(h));

1           “(2) the term ‘wire communication’ has the mean-  
2           ing set forth for such term in section 2510 of this title;

3           “(3) the term ‘court of competent jurisdiction’  
4           means—

5                   “(A) a district court of the United States (in-  
6                   cluding a magistrate of such a court) or a United  
7                   States Court of Appeals; or

8                   “(B) a court of general criminal jurisdiction  
9                   of a State authorized by the law of that State to  
10                  enter orders authorizing the use of a pen register;

11           “(4) the term ‘pen register’ means a device which  
12           records or decodes electronic or other impulses which  
13           identify the numbers dialed or otherwise transmitted,  
14           with respect to wire communications, on the telephone  
15           line to which such device is attached, but such term  
16           does not include any device used by a provider of wire  
17           communication service for billing, or recording as an  
18           incident to billing, for communications services provid-  
19           ed by such provider; and

20           “(5) the term ‘attorney for the Government’ has  
21           the meaning given such term for the purposes of the  
22           Federal Rules of Criminal Procedure; and

23           “(6) the term ‘State’ means a State, the District  
24           of Columbia, Puerto Rico, and any other possession or  
25           territory of the United States.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters for  
2 part II of title 18 of the United States Code is amended by  
3 inserting after the item relating to chapter 205 the following  
4 new item:

“206. Pen Registers..... 3121”.

5 SEC. 302. EFFECTIVE DATE.

6 (a) IN GENERAL.—Except as provided in subsection (b),  
7 this title and the amendments made by this title shall take  
8 effect ninety days after the date of the enactment of this Act  
9 and shall, in the case of conduct pursuant to a court order or  
10 extension, apply only with respect to court orders or exten-  
11 sions made after this title takes effect.

12 (b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF  
13 INTERCEPTIONS.—Any pen register order or installation  
14 which would be valid and lawful without regard to the  
15 amendments made by this title shall be valid and lawful not-  
16 withstanding such amendments if such order or installation  
17 occurs during the period beginning on the date such amend-  
18 ments take effect and ending on the earlier of—

19 (1) the day before the date of the taking effect of  
20 changes in State law required in order to make orders  
21 or installations under Federal law as amended by this  
22 title; or

23 (2) the date two years after the date of the enact-  
24 ment of this Act.

